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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/935,629	09/23/1997	E. ALAN BATES		8872

7590

12/05/2002

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EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 12/05/2002

35

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/935,629

Applicant(s)

BATES ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,8 and 23-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8 and 23-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,8,23-34 and 37-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dafforn et al. in view of Senior.

See the appropriate paragraph of paper 30.

With respect to new claims 46-48, Dafforn et al. teach a well openings(22,20) the extend from the top into the device that surround an empty space for receiving the sample. Dafforn et al. also teaches antigen/antibody detection techniques and the addition of the sample through openings(22,20).

Claims 1,8 and 23-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chipkowski and WO 97/33519 (referenced as WO hereafter) alone or in view of Senior.

See the appropriate paragraph of paper 30.

With respect to new claims 46-48, Chipkowski and WO teach openings(51) extending from the top of the cartridge and is surrounded by empty space were the sample is received. Chipkowski and WO teaches antigen/antibody detection techniques and the addition of the sample through openings(51).

***Response to Arguments***

Applicant's arguments filed 10/11/02 have been fully considered but they are not persuasive.

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Applicant argues Dafforn et al. cannot be properly modified in view of Senior because Senior teach a type of cover that would not work with Dafforn et al. The Office maintains Senior is used to teach it is known and advantageous to use a cover having a snap fit. It would have been within the skill of the art to make a cover having a snap fit for the device of Dafforn et al.

Applicant state claim 46 further defines over the art. The Office maintains Dafforn et al. teaches this newly claimed limitation.

Applicant state new claims 47-48 specify the use of a test strip employing antigen/antibody binding and adding the sample to the device. The Office maintains Dafforn et al. teach antigen/antibody reagents and sample addition to the device thus meeting these new claims.

Applicant state Chipkowski and WO fail to teach the sample openings(51) sealed by the container. Both Chipkowski and WO teach solid covers (22 and 15) respectively, that perform the claimed sealing function.

Applicant states Chipkowski and WO in view of Senior is untenable. The Office maintains Senior teaches motivation to use a cover and the motivation is sufficient properly combine the references.

Applicant states the rejections over Chipkowski and WO is improper because the missing features are not within the skill of the art. The Office assumes Applicant is referencing the "snap fit" and photocopying of the results. The Office maintains both of these are within the skill of the art.

### ***Conclusion***

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9319 for regular communications and 703-872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Lyle A Alexander  
Primary Examiner  
Art Unit 1743



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December 4, 2002